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## LAW OF OUTER SPACE

### INTRODUCTION

A law of outer space is being established by the practice and agreements of nations. Where no practice or agreement has yet been established, the law is expressed in national arguments supporting national interests. These arguments are often made for propaganda effect, and will relate to "law," "peace," "reason," and "respect for others." They draw upon past custom in related areas, other established principles of conduct, and some measure of reason or logic.

### HISTORICAL BACKGROUND

Long before the first satellite people feared that the first country in space would use space for its own purposes to the exclusion of others, with dangerous military consequences. They argued that outer space should be equally free for exploration and peaceful use by all nations. Drawing analogies from traditional law of exploration and discovery, it was said that space resources are not subject to national appropriation, that no state shall exercise jurisdiction in outer space, and that international law applies to outer space. These ideas have become embodied in the United Nations unanimous Declaration of Legal Principles (UNGA Resolution 1962 (XVIII), (1963)).

Related to the law of outer space has been the law of the high seas, also free for equal use by all nations. Space vehicles are compared to sea ships with home ports, national registration, freedom of navigation, etc. Also related has been the law of the air. On the basis of self-protection, states have claimed the right to control happenings in the air over their territories. Aircraft must obtain permits, avoid certain areas, and may be shot down if in violation of the conditions prescribed by the underlying nation (violation of its sovereignty).

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With this background in international law, the first satellite orbited the earth in October 1957. No country claimed a violation of sovereignty by the overflight. In December 1958 the United Nations Ad Hoc Committee on Peaceful Uses of Outer Space was established, and in 1961 and 1963 the General Assembly passed unanimous resolutions upon which the law of outer space is now based.

The UNGA Resolutions #1721 of 1961 and #1962 of 1963 expressed these firmly established principles for the use of outer space:

- a. International law applies to outer space.
- b. Outer space shall be used for peaceful purposes.
- c. Outer space is free for exploration and use by all.
- d. Outer space is not subject to national appropriation.
- e. Outer space will be used for the benefit of all mankind.

## DEVELOPMENTS IN THE LAW

### 1. Peaceful Purposes

Because outer space is to be used only for peaceful purposes, much current talk about space activity concerns definition of the term "peaceful." The Soviet Union has said that activities with military uses are not "peaceful," and are therefore illegal. Reconnaissance satellites and the MOL are criticized on this basis. The argument has emotional appeal but little logical force because virtually every space activity has some military implications.

Legal response includes the valid positions (1) that the activity is necessary in the nation's right of self-defense; (2) that a defensive purpose is a peaceful purpose; (3) that the activity is not military at all; and (4) that its benefits for peace outweigh its military implications.

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## 2. Boundaries in Space

States can legally control events in the air over them. Because space is "free" they cannot legally control events in outer space over them. Therefore, much effort has been spent attempting to define the boundary between "air" space and "outer" space. Scientists cannot agree where air exists, vehicles may travel in both air and space, states do not want to restrict either their air "jurisdiction" or their space "freedom," and technological changes are unpredictable. No boundary has been defined, but the U-2 incident dramatically illustrates the importance of the issue. U-2s and astronauts have flown over the earth taking pictures. The Powers' U-2 flew low enough to cause a violation of Soviet air space, but astronauts fly high enough to be called legal.

## 3. Interference with Others

Freedom of space for use by all means state must not use space in any manner to interfere with its free use by others. U. S. project West Ford, orbiting millions of free-flying space needles in a communications experiment, was criticized as a danger to space navigation.

## 4. Reconnaissance

There is no agreement that reconnaissance from outer space is legal. The Soviet Union has proposed that reconnaissance be declared illegal as a violation of sovereignty and a military use. The U. S. has answered that observation has many peaceful uses, that breaking secrecy is peaceful and beneficial, and comparable law of the sea permits observation from the high seas. In spite of its arguments, the USSR has not officially protested the U. S. reconnaissance satellites and has sent its own reconnaissance satellites over the U. S. The Soviet argument has had propaganda effect and has been a useful tool in avoiding agreement on other space subjects.

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## 5. Weapons

The UNGA Resolution #1884 (1963) and the Nuclear Test Ban Treaty ban the orbiting of nuclear and other weapons of mass destruction in outer space. Such a rule may be easily eroded, however, by practice justified with legal arguments such as (1) self-defense is necessary, (2) "tactical" weapons are not weapons of mass destruction, (3) a nuclear-powered rocket is not a nuclear weapon, (4) defensive weapons were not intended to be prohibited because they are peaceful, (5) weapons testing is not weapons orbiting, (6) a weapon in synchronous orbit does not overfly other states and is not prohibited.

The problems of weapons in space are inexorably bound up in the many problems of general disarmament. The U. S. will insist on inspection to prove compliance with any disarmament agreement. There has been little progress on this issue.

## 6. United Nations Registration

UN General Assembly Resolution #1721 called upon states to register space launches with the United Nations. The United States registers past launches every two weeks, summarized every six months, reporting identification number, the launch vehicle, satellite category of purpose, date of launch, nodal period, inclination, apogee and perigee. The USSR and other nations have also registered satellite and space vehicle launches without regular pattern. Details of purpose are not reported. The U. S. reports data on unsuccessful launches, and occasionally, when objects are launched and returned within the same reporting period, does not report the nodal period, inclination, the apogee and perigee. Since early 1963 all successful Soviet satellites have been registered. U. S. representatives at the UN have said that all U. S. launches are registered.

## 7. Return of Spacecraft

UNGA Resolution #1962 stated in general terms that states will return downed astronauts or spacecraft to the country of origin. Further agreement on details is considered necessary, but is delayed by argument between the U. S. and the USSR. The USSR will not agree to return

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military satellite parts, and have made proposals with this in mind-- for example, that return be conditioned on the original launch being made in accord with international law, or for peaceful purposes. The U. S. has opposed because the USSR could unilaterally claim that a launch was improper and could refuse return. There is no agreement how to resolve disputes.

#### 8. Liability for Damage

UNGA Resolution #1962 also provided in general terms that the launching state will be liable for damage caused by its space activities. Further agreement on details is delayed by USSR-U. S. differences on many details of a proposed international convention.

#### 9. Communications

Communication satellites have been launched and operated in cooperation and agreement with other nations. Frequency allocation, right to use satellites, etc., are important aspects of legal regulation which are being negotiated between nations. Most of this appears to be outside the USSR orbit and therefore avoids much of the cold war polemics. However, the USSR and France are developing communications capabilities and may soon enter the arena.

#### 10. Sharing Information

In keeping with the principle that space be used for the benefit of all mankind, there are numerous programs whereby the U. S. shares with other nations scientific information derived from its space activity. Weather, cosmic and mapping information has been exchanged or made available to others. There has been some general agreement and exchange of scientific information between NASA and the Academy of Sciences of the USSR.

#### 11. Other Law

There has been some academic discussion of (1) meeting with intelligent beings from outer space, (2) establishing bases on and taking materials from celestial bodies, (3) laws of traffic and accidents in space, (4) piracy, theft, murder, sabotage, and other crimes in space.

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## FUTURE DEVELOPMENTS

As technology improves, nations will be able to orbit all types of weapons and weapon-like systems. They will also be able to shoot down objectionable space objects. It will be to their most serious interest to launch early warning and missile intercept devices. With each of these advances space capable nations must expect to answer charges that these activities are in violation of international law for many reasons: (1) not peaceful use, (2) weapons of mass destruction, (3) interference with free use of space, (4) violations of underlying sovereignty.

Answering these charges can be avoided, as the USSR avoids it, by maintaining official silence about space activity, except when propaganda advantage warrants announcement of some beneficial activity. If secrecy continues, nothing in the law can prevent the arms race from expanding into outer space. Therefore, space nations can expect pressure to relax the secrecy. This may come in the form of proposals to allow inspection and observers at launches and preparation sites. An argument that international law requires reasonable public notice of space activities can be made. This would be based upon the interest of all states in space activity, the practice of states in announcing weapons tests on the high seas, and the publicity, sharing and registration accorded activities in space to date. Proposals for more UN participation in space programs can be expected.

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Attached is a memorandum on the law of outer space. It is intended to be merely a primer of the basic concepts and arguments that are involved. A great deal has been written on each subject and little has been definitely decided, but it is hoped that this will serve to make the readers familiar with the language of the problem. We will discuss possibilities of Agency action in encouragement of freedom of space with the Directorates concerned.

cc: DDCI

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LAWRENCE R. HOUSTON

General Counsel

(DATE)

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